Defendants' Motion for Summary Judgment on the Alternative for Summary Judgment based on Plaintiff's Motion for Summary Judgment on April 9, 2001. Christopher Ford appeared on behalf of defendants and Roger Fendig, Esq. appeared on behalf of plaintiffs.

After considering the arguments and supporting papers, arguments of counsel and all other matters presented to the Court and for reasons set forth in the separate findings of fact and conclusions of law and good cause appearing therefor,

IT IS HEREBY ORDERED AND ADJUDGED:

1. That defendants' Alternative Motion for Summary Judgment is GRANTED.

2. That plaintiff take nothing, and that the action be dismissed on the merits.

3. That defendants recover their costs of suit.

Dated: May 9, 2001

Ronald S. W. Lew
United States District Judge

[Filed May 10, 2001]
[Entered May 11, 2001]

JAMES E. HOLST, #34654
JOHN F. LUNDBERG, #42956
CHRISTOPHER M. PATTI, #118283
University of California
1111 Franklin Street, 8th Floor
Oakland, California 94607-5200
Telephone: (510) 987-9800
Facsimile: (510) 987-9757

Attorneys for Defendants
Charles Li, Henry Yang, Galen Stucky, Fred Lange, Daniel E. Morse, and Sarah Pritchard

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER TODD BROWN,	) CASE NO. 00-6492-RSWL AIJX
Plaintiff,	) ~~[PROPOSED]~~ FINDINGS
v.	) OF UNCONTROVERTED FACT AND
CHARLES LI, HENRY YANG, GALEN STUCKY, FRED LANGE, DANIEL E. MORSE, and SARAH PRITCHARD,	) CONCLUSIONS OF LAW) Date: April 30, 2001) Time: 9:00 a.m.) Courtroom: 21) Honorable Ronald S.W. Lew
Defendants.	)

Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, originally came on for hearing on January 8, 2001. The Court granted plaintiff's request, made pursuant to Federal Rule of Civil Procedure 56(f), for a continuance to permit plaintiff to take depositions and discovery and to allow the parties to supplement their papers, and the continued hearing was held on April 30, 2001. Based on the papers filed in support and opposition to the motion, on the arguments advanced at the hearing, and on all matters properly a part of the record, the Court makes the following Findings of Uncontroverted Facts and Conclusions of Law. Any Finding of Uncontroverted Fact that is deemed more appropriately characterized as a Conclusion of Law is incorporated as a Conclusion of Law, and any Conclusion of Law that is deemed more appropriately characterized as an Uncontroverted Fact is incorporated as an Uncontroverted Fact.

I. UNCONTROVERTED FACTS

1. Prior to May 2000, plaintiff was a graduate student in the master's degree program of the Department of Materials Sciences at the University of California at Santa Barbara ("UCSB"). Defendants Galen Stucky, Frederick Lange and Daniel Morse were the members of plaintiff's thesis committee; defendants Charles Li and Henry Yang are, respectively, the Dean of the Graduate Division and the Chancellor at UCSB.

2. UCSB Graduate Division regulations provide.

(a) that master's degree candidates must submit their master's degree theses to the members of their thesis committees for approval;

(b) that the student and committee are jointly responsible for "everything between the margins" of the thesis;

(c) that immediately following the title page of the thesis is an approval page which must be signed by the committee members certifying their approval of the thesis;

(d) that in reviewing and evaluating a thesis, the committee is to apply standards of the academic discipline that govern the form, content and presentation of scholarly publications;

(e) that a student may include an acknowledgments section in a thesis "to acknowledge particular persons who helped you;" and

(f) that, as a condition of receiving the degree, students submit the approved version of the thesis to the UCSB Davidson Library, where approved theses are placed in the Library's collection and made available to the public.

3. In the spring of 1999, plaintiff submitted his thesis to the members of his committee, who approved it. Prior to submitting the thesis to the Library, and without the knowledge of the committee members, plaintiff inserted a page titled "Disacknowledgments" immediately after the signed approval page. The "Disacknowledgments" contained profanity and criticisms of University administrators and the Governor of California.

4. The matter was referred by the Library to Dean Li and by him back to the thesis committee. The committee members reaffirmed their approval of the thesis as submitted to them, but refused to approve addition of the "Disacknowledgments" because they believed that it was unprofessional, inappropriate, and violated publication standards for acknowledgments in

scientific papers. They also did not want their names associated with it.

5. Plaintiff was informed that he could obtain his degree by submitting the approved thesis (without the "Disacknowledgments") to the Library, but he refused to do so.

6. Instead, after meeting and discussing his position with some of the committee members and Dean Li, plaintiff appealed the committee's decision to a series of University bodies, which included: (1) a written appeal to the Academic Affairs Committee of the Department of Materials; (2) a written appeal to Associate Dean of the Graduate Division Diane Mackie; (3) a written presentation to the UCSB Graduate Council; and (4) a meeting with the Chair of the UCSB Academic Freedom Committee, and written presentations to the entire Committee. All considered and rejected plaintiff's appeal.

7. In May 2000, as the time limit for plaintiff to receive his degree or face academic dismissal approached, the University granted him the degree on the basis of the approved thesis.

8. The University continues to refuse to place plaintiff's thesis with Disacknowledgments in the public collection of the Davidson Library.

9. Plaintiff's first and third claims for relief assert that defendants' refusal to grant his degree prior to May 2000 violated plaintiff's free speech rights under the United States and California constitutions. The second claim for relief asserts that defendants violated plaintiff's due process rights. Pursuant to the first three claims, plaintiff seeks an award of damages against defendants Li, Yang, Stucky, Lange and Morse.

10. Plaintiff's fourth claim seeks an injunction compelling defendants to add the thesis with

Disacknowledgments to the Library's public collection and a declaration that their failure to do so violates the Constitution.

11. Defendants Li, Yang, Stucky, Lange and Morse moved for dismissal or summary judgment on the first three claims under the doctrine of qualified immunity and all defendants moved for dismissal or summary judgment on the fourth claim for failure to state a claim upon which relief could be granted.

II. CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction pursuant to 28 United States Code section 1331.

2. Venue is proper in this judicial district pursuant to 28 United States Code section 1391(e).

3. Pursuant to Federal Rule of Evidence 201, the Court grants defendants' request that it take judicial notice of the UCSB Guide to Filing Theses and Dissertations and the UCSB Graduate Handbook.

4. The doctrine of qualified immunity shields public officials from civil liability for damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 818.

5. There is no "clearly established" right of students to be free from content-based evaluation of their academic work by their teachers and professors. Although public educational institutions must respect the free speech rights of students, e.g., *Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503, 512, those rights do not prevent educators from evaluating student academic work. Rather,

universities an their faculty have significant discretion in evaluating student academic work and counts should avoid interfering with such judgment. E.g., *Regents of University of Michigan v. Ewing* (1985) 474 U.S. 214, 225; *Zukle v. Regents of University of California* (9th Cir. 1999) 166 F.3d 1041, 1047. Therefore, educators have broad discretion to evaluate student work based on the content of speech. *Settle v. Dickson County School Bd.* (6th Cir. 1995) 53 F.3d 152, 155-56.

6. Individuals, including the members of plaintiff's thesis committee, also have the constitutionally protected discretion to refuse to associate with speech with which they disagree. See, e.g., *Pacific Gas & Elec. V. California P.U.C.* (1986) 476 U.S. 1.

7. The judgment of the University that thesis acknowledgments should be subject to review and approval by thesis committees and the judgment of plaintiff's thesis committee that the "Disacknowledgments" did not meet professional standards as required by University policy are both well within the legitimate scope of defendants' academic discretion and do not violate any "clearly established" right of plaintiff.

8. The requirements of due process "apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents v. Roth* (1972) 408 U.S. 564, 569. "A protected property interest exists if there is a 'legitimate claim or entitlement' to a specific benefit .... A subjective expectancy creates no constitutionally protected interest." *Goodisman v. Lytle* (9th Cir. 1984) 724 F.2d 818, 820.

9. Plaintiff had no clearly established property interest in receiving a degree, since his right to the degree was contingent, by University regulations, on his submission on an *approved* thesis to the Library.

10. Even assuming that plaintiff did have a property interest in receiving a degree, he was afforded adequate process. There is no established right to a due process hearing in cases, like this one, involving academic evaluations. See *Board of Curators, Univ. of Mo. V. Horowitz* (1978) 435 U.S. 78, 90. "[T]he right to a due process hearing at all, where the action under review is a decision involving 'academic evaluations,' is doubtful, if not non-existent." *Clark v. Whiting* (4th Cir. 1979) 607 F.2d 634, 643. Even in cases involving disciplinary dismissal – where the Supreme Court has imposed greater due process requirements – all that is required is "an 'informal give-and-take' between the student and the administrative body dismissing him." *Board of Curators, Univ. of Mo. V. Horowitz, supra,* 435 U.S. at 86.

11. Plaintiff received more notice and opportunity to be heard than is required even for a disciplinary dismissal.

12. There is no constitutional right to compel a library to include in its collection a student thesis that has not yet been approved. Although library *patrons* have been recognized to have a First Amendment right to prevent a library from *removing* materials from its collection 'in a narrowly partisan or political manner," *Board of Education v. Pico* (1982) 457 U.S. 853, 870, that right does not limit a public library's decision to *add* materials to a library's collection. *Id.* at 871. Nor doe authors have any recognized right to insist that libraries obtain their works.

13. Further, the *Pico* plurality held that even removal decisions resulting from "established, regular, and facially unbiased procedures" would not violate the First Amendment. *Id.* at 874. Here, pursuant to established University rules, the "Disacknowledgments" was never eligible for inclusion in the Library because it was never approved by a thesis committee.

14. There exists no genuine issue of material fact, and defendants are entitled to judgment as a matter of law on all plaintiff's claims for relief.

Dated: May 9, 2001

Ronald S. W. Lew
United States District Judge